

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

MDL NO. 1456

THIS DOCUMENT RELATES TO:

CIVIL ACTION: 01-CV-12257-PBS

BMS SETTLEMENT,
TRACK TWO SETTLEMENT, AND
ASTRAZENECA CLASS 2 AND 3
SETTLEMENT

Judge Patti B. Saris

**CLASS PLAINTIFF'S STATUS REPORT FOR BMS,
TRACK TWO AND ASTRAZENECA SETTLEMENTS**

A. Background

On November 30, 2010, the Court issued an Order for Final Consideration of the BMS Settlement [Docket No. 7313] and an Order for Final Consideration of the Track Two Settlement [Docket No. 7314] (collectively, the “November Orders.”). Both orders include a provision requiring the Centers for Medicare and Medicaid Services (“CMS”) and its vendors to produce electronic data concerning Class 1 consumers by December 15, 2010. For example, the Order relating to the BMS settlement provides:

1. Data Production. This Court hereby orders that the Centers for Medicare and Medicaid Services (“CMS”) and its vendors, the Research Data Assistance Center (“RESDAC”) and Buccaneer, shall, no later than December 15, 2010, produce to the Claims Administrator electronic data sufficient to identify all transaction information for individuals for whom CMS reimbursed any of the specific drugs involved in the BMS Settlements, as identified in a separate list of J Codes or HCPCS. . . .

Each order also set forth a separate schedule for accomplishing direct mail notice to Class 1 consumers, other settlement milestones and a date for a final approval hearing related to each settlement.

The November Orders also directed Class Counsel to provide, beginning on December 17, 2010, monthly status reports “detailing the progress” of both the BMS and Track 2 Settlements. This is the first report.

B. BMS Proposed Settlement

On December 13, 2010, CMS’s vendor, Buccaneer provided Class Counsel with data containing the names and addresses of all consumers for whom CMS made a reimbursement associated with one or more drugs in both the BMS and Track Two settlements. In addition, that file contained information concerning the drug administration associated with each consumer. The data provided did not contain “all transaction information” as set forth in the Order. However, the information is sufficient to mail the notice cards to BMS Class 1.

Utilizing the delivered data, Rust Consulting, Inc. (“Rust”), the Court-appointed claims administrator, is able to identify by name approximately 700,000 individuals who are potential members of Class 1 in the BMS Proposed Settlement. Rust is preparing to send initial mailed notice to each of the identified consumers. The first wave of direct notice to Medicare Class 1 beneficiaries in the BMS settlement is December 31, 2010. Initial notice will be mailed on or before December 31, 2010, in compliance with Court-approved BMS settlement schedule. In short, CMS and its vendor have substantially complied with the December 15, 2010 deadline and we expect the December 31, 2010 deadline to be met.

C. Track Two Proposed Settlement

Utilizing the name and address file from CMS referenced above, Rust is able to identify by name approximately 19.3 million individuals who are potential members of Class 1 in the Track Two Settlement. The direct notice provision date for Track 2 is January 31, 2010. As of this date, Rust does not anticipate any delay in mailing notice to each of these individuals on or before January 31, 2011, in accordance with the Court-approved Track Two settlement schedule.

As discussed with the Court in the November 19, 2010 conference, Class Counsel is preparing a report to the Court regarding the total expenses associated with notice to Class 1 consumers in the Track Two settlement. That report is due to the Court on December 31, 2010. That report may suggest alternatives, if any, to the currently approved notice program for Track Two Class 1 consumers.

D. Production of Additional Data for the BMS and Track 2 Proposed Settlements

In addition to the data delivered on December 13, 2010, Buccaneer also provided Class Counsel (on December 14, 2010) additional claims level data for approximately 25% of the total number of individuals identified in the name and address file. This information will be used later in the notice process to calculate claim amounts for each individual who returns a claim card in response to the initial notice identifying themselves as having made out-of-pocket percentage co-payments for one or more of the drugs in the settlements. Buccaneer is scheduled to produce an additional 25% of this claims level data on December 22, 2010, and the remaining data as it becomes available on a rolling basis. Declaration of Cynthia S. Weigel, attached hereto as Exhibit A, ¶ 6. Buccaneer advises that its data production should be complete no later than January 15, 2011. *Id.*

Given that the claims-level data will not be utilized until class members return the initial claim cards (January 31, 2011 deadline for BMS, and February 28, 2011 for Track Two), Rust and Class Counsel do not anticipate any adverse impact to the Court-approved schedule in either settlement provided Buccaneer produces the remaining claims-level data by mid-January.

E. AstraZeneca Class 2/3 Proposed Settlement

The final hearing on the AstraZeneca Class 2 and Class 3 Proposed Settlements (both Massachusetts and non-Massachusetts) is scheduled for January 21, 2011. On Wednesday, December 15, 2010, Class Counsel filed their papers in support of the settlement, as required under the Court's scheduling order.

F. The Next Status Report

Pursuant to the November Orders, Class Counsel will submit its next regularly-scheduled Status Report on January 3, 2011.

DATED: December 17, 2010

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CLASS COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing, **CLASS PLAINTIFF'S STATUS REPORT CONCERNING RECIEPT OF CMS DATA AND STATUS OF NOTICE TO POTENTIAL CLAS 1 CONSUMERS IN THE BMS AND TRACK TWO SETTLEMENTS**, to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on December 17, 2010, a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Steve W. Berman

Steve W. Berman